APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,977	06/29/2001	Michael Joseph Calderaro	AUS9-2001-0235-US1	9300

40412 7590 10/16/2006		EXAMINER

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3623	

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *10 August 2006*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-20* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-20* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1. The following is a **FINAL** office action upon examination of application number 09/895,977. Claims 1-20 are pending in the application and have been examined on the merits discussed below.

Response to Arguments

2. Applicant's arguments filed August 10, 2006 have been fully considered but they are not persuasive.

Applicant argues that Walker is not concerned with, and does not address the issue of analyzing attrition risk on an individual basis for individual employees, specifically, by not teaching or suggesting the step of "analyzing attrition risk for each of the selected employees using the risk planning factor data and the actual employment data, wherein the attrition risk is individually analyzed for each of the selected employees".

The Examiner respectfully disagrees. The Examiner asserts that Walker Information (along with The Hudson Institute) administered a survey to a plurality of employees, whose individual results have been tallied and analyzed before being

aggregated together for presentation in the 1999 Walker report. Specifically, the survey

collects data from employees regarding their loyalty to their employers (i.e., their intent

to stay with their employer), thus analyzing attrition risk for each of the survey

participants (the "selected" employees) on an individual basis. The Examiner further

asserts that the Walker report is an aggregate representation of the survey results that

reflects the collective response of survey participants, whose responses were

individually considered.

Applicant argues that neither Paizis nor walker teaches or suggests "calculating a

flight risk" for each individual employee.

The Examiner respectfully disagrees. The Examiner points out that even though

the terms "calculating" and "calculated" exist in the claim language, there is no evidence

that anything is actually "calculated" (i.e., there is no numerical consideration that would

lead to a calculation or computation); therefore, this limitation has been taken at its

broadest reasonable interpretation, and has been regarded as being analogous to an

evaluation of flight risk. As presented above, the Examiner further asserts that the

Walker report is an aggregate representation of the survey results that reflects the

collective response of survey participants, whose responses were individually

considered, and thus "calculates" (i.e., evaluates and considers) the flight risk for each

employee on an individual basis.

Applicant argues that neither Paizis nor Walker teaches or suggests "calculating a flight risk" or "assigning a risk quadrant" for each individual employee.

The Examiner respectfully disagrees. As seen on page 1 of the 1999 Walker reference, employees have been grouped into one of four employee groups, which the Examiner has interpreted to be "risk quadrants" (Accessible, Truly Loyal, Trapped, High Risk). The Examiner asserts that the placing of each employee into one of said employee groups is based on their "flight risk", as survey results are used to predict employee loyalty to their employees, loyalty being characterized as intent to stay (essentially measuring employee attrition and turnover). The Examiner also asserts that each employee is placed into one of the four employee groups, and pages 1-2 of the 1999 Walker reference is a summary of the methodology of the development of the four employee groups.

Applicant argues that neither Paizis nor Walker discloses "retrieving motivators and inhibitors included with risk planning factor data for a particular employee, and then using those motivators and inhibitors to calculate a flight risk for that particular employee".

The Examiner respectfully disagrees. The Examiner asserts information collected in surveys conducted by Walker, which include employee belief in availability of job opportunities existing outside their organization, whether the organization shows

genuine concern for its employees, whether the company provides family-friendly

benefits, whether the company cares about developing employees for the long term,

whether the company provides fair treatment, fair pay, and fair policies, whether the

organization trusts its employees, whether employees are given the freedom to make

their own decisions at work, whether employees feel encouraged to try new ways of

doing things at work, whether supervisors pay attention to how people feel, fairness at

work, whether the company cares and is concerned for employees, employee

satisfaction with day to day activities, company trust in employees, and intangible or

"soft" aspects of corporate culture including attention from management and the

confidence that their organization would help in time of need constitute both inhibitors

and motivators (i.e., an employee who feels that their employer is fair would find it to be

motivating, whereas an employee who feels that their employer is unfair would find it to

be an inhibitor). Walker also cites employee feelings, like perceptions of limited career

advancement opportunities, or a spouse's relocation or a return to school, which may

also constitute inhibitors and/or motivators [Pages 2-4 of the 1999 Walker U.S Report].

The Examiner also asserts that the motivators and inhibitors for each individual

employee are taken into consideration by Walker when evaluating individual employee

loyalty for placement into a "risk quadrant" **(likelihood of employees who are truly**

loyal {want to be there and expect to stay at least two years}, accessible {want to

be there, but do not intend to stay}, trapped {don't want to be there, but intend to

be there}, and high risk {don't want to be with the organization and don't intend to

stay; intent to stay is measured for each participant in the survey, and then used

to place said participant into one of the four employee groups based on predicted

loyalty to their employer} [Pages 1-3 of the 1999 Walker U.S Report].

As pointed out above, even though the terms "calculating" and "calculated" exist

in the claim language, there is no evidence that anything is actually "calculated" (i.e.,

there is no numerical consideration that would lead to a calculation or computation);

therefore, this limitation has been taken at its broadest reasonable interpretation, and

has been regarded as being analogous to an _**evaluation**_ of flight risk. As presented

above, the Examiner further asserts that the Walker report is an aggregate

representation of the survey results that reflects the collective response of survey

participants, whose responses were individually considered, and thus "calculates" the

flight risk for each employee on an individual basis.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Paizis (U.S Patent #6,338,042) in view of "The 1999 U.S National Employee

Relationship Benchmark Report" by the Walker Information Global Network (herein after referred to as Walker).

As per claim 1, Paizis teaches a computer-implemented method for analyzing attrition risk for employees, said method comprising:

(a)   receiving planning factor data **(employee data from performance evaluations such as employee competency and contributions)** from a user, the planning factor data corresponding to one or more selected employees **(using performance evaluations of a group of individuals who have substantially the same role in an organization)** [Figures 5A, 5B and 5C, Column 4, lines 11-12, Column 5, lines 34-48, Claims 1 and 6];

(b)   storing the planning factor data in employee profile data areas **(current status section 502)**, wherein each employee profile data area corresponds to one of the selected employees **{each row represents a different employee}** [Figures 5A, 5B and 5C]; and

(c)   retrieving actual employment data **(current salary and names of employees)** for each of the selected employees in the employee profile data areas **(current status section 502)** [Column 9, lines 19-21, Figures 5A, 5B and 5C].

The planning factor data taught by Paizis is based on employee performance evaluations and does not focus on the risk of employee attrition. However, Walker teaches data (survey results) of employees pertaining to employee satisfaction with their workplace and their intent to stay with their employer (i.e., likelihood of employee

attrition) that further reveals statistical breakdowns of employee loyalty, and their

likelihood of staying with the company. Furthermore, Walker discusses the results of

employees participating in the survey (thus, each participant's responses were

individually collected, stored, and analyzed) [Pages 2-4 of the Walker 1999 U.S

Report].

Paizis is directed towards considering employee worth in determining employee

compensation (which impacts employee retention). Walker is directed towards an

analogous art of studying employee relationships with their employer and its impact on

loyalty and commitment (leading to employee retention); thus, it would have been

obvious to one of ordinary skill in the art at the time of invention to modify the teachings

of Paizis to include data pertaining to the risk of employee attrition in order to allow

companies to take into consideration the factors impacting employee loyalty and

commitment, which may lead to modifications to company policy and procedures in

order to foster a greater sense of loyalty and commitment from employees, and

establishing greater levels of fairness, trust, care, and concern from employers, leading

to increased levels of employee retention, loyalty, and commitment.

Although not explicitly taught by Paizis, Walker teaches:

(d)   analyzing attrition risk **{determining levels of employee commitment

and intent to stay, embodied by placement into one of four groups based on

predicted loyalty to their employer}** for each of the selected employees using the risk

planning factor data **{survey results of employees pertaining to their commitment and loyalty to their employers and why they feel that way; using Walker's model-based survey methodology}** and the actual employment data, wherein the attrition risk is individually analyzed for each of the selected employees **{survey results, including attrition risk, are collected for each individual participant before they are consolidated }** [Pages 1-2 of the 1999 Walker U.S Report].

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the teachings of Paizis to combine employee data with studies on employee loyalty and commitment, because the combination would enable the company to determine the attrition risk of employees and accordingly develop changes in company policy or procedures in order to improve employee loyalty and commitment, which may lead to a decrease in employee attrition.

As per claim 2, Paizis teaches the computer-implemented method as described in claim 1 further comprising:

(c)   retrieving contribution data **(measuring levels of contribution of employees, where levels of contribution may include contributions to leadership, overall business results or goals; obtaining contribution scores, which reflect the overall perceived levels of contribution of individuals in a position)** included with the actual employment data corresponding to the selected **{each row represents a**

different employee} employees [Column 4, lines 33-35, 49-50, and 53-54, Column 5,

lines 60-63, Claims 1, and 6].

Although not explicitly taught by Paizis, Walker teaches:

(a)   retrieving motivators and inhibitors **(belief in availability of job**

opportunities existing outside their organization, the organization shows genuine

concern for its employees, company provides family-friendly benefits, company

cares about developing employees for the long term, fair treatment, fair pay, fair

policies, organization trusting its employees, employees given the freedom to

make their own decisions at work, employees feel encouraged to try new ways of

doing things at work, supervisors paying attention to how people feel, fairness at

work, care and concern for employees, satisfaction with day to day activities,

trust in employees, intangible or "soft" aspects of corporate culture including

attention from management and the confidence that their organization would help

in time of need, perceptions of limited career advancement opportunities, need

for a spouse's relocation or a return to school) {each of the listed factors may be

either a motivator or an inhibitor, depending on the perception of an individual

employee, i.e., an employee who feels that their employer is fair would find it to

be a motivating factor, whereas an employee who feels that their employer is

unfair would find it to be an inhibitor factor} included with the risk planning factor

data **{measuring intent to stay and predicting loyalty to their employer}**

corresponding to the selected employees [Pages 2-4 of the 1999 Walker U.S Report];
and

(b)   calculating **{the Walker report is an aggregate representation of the
survey results that reflects the collective response of survey participants, whose
responses were individually considered, and thus "calculates" (i.e., evaluates and
considers) the flight risk for each employee on an individual basis}** a flight risk
**(likelihood of employees who are truly loyal {want to be there and expect to stay
at least two years}, accessible {want to be there, but do not intend to stay},
trapped {don't want to be there, but intend to be there}, and high risk {don't want
to be with the organization and don't intend to stay})** for each of the selected
employees **{for each participant in the survey}** based on the motivators and
inhibitors, wherein the flight risk is individually calculated for each of the selected
employees **{intent to stay is measured for each participant in the survey, and then
used to place said participant into one of the four employee groups based on
predicted loyalty to their employer}** [Pages 1-3 of the 1999 Walker U.S Report {which
also includes a breakdown by industry}].

As per element (d), Walker teaches the step of assigning a risk quadrant
(employee group) from a plurality of risk quadrants to each of the selected employees
{for each participant in the survey} based on the flight risk **(predicted loyalty to
their employer)** corresponding to each employee [Page 1 of the 1999 Walker U.S
Report].

Paizis is directed towards considering employee worth in determining employee

compensation (which impacts employee retention). Walker is directed towards an

analogous art of studying employee relationships with their employer and its impact on

loyalty and commitment (leading to employee retention); thus, it would have been

obvious to one of ordinary skill in the art at the time of invention to combine the

teachings of Paizis and Walker to assign a risk quadrant to each employee based on a

weighted score of their flight risk and contributions, because it would enable the

company to cluster employees into groups of similar flight risk and contribution levels,

leading to the "prioritizing" of employees who should be targeted for retention since

certain combinations of flight risk and contributions are more desirable than others (i.e.,

high contribution, high flight risk vs. low contribution, high flight risk, etc.), thereby

enhancing the ability to integrate competency measures, contribution levels, and market

distribution data into compensation decisions, by using the comparison of relative

rankings to determine a suggested level of compensation for each individual, which is a

goal of Paizis [Column 2, lines 46-48, 55-58].

As per claim 3, although not explicitly taught by Paizis, Walker teaches the step

of displaying a summary corresponding to each risk quadrant **(employee groups are

labeled, Truly Loyal, Accessible, Trapped, and High Risk)** [Pages 1-2 of the Walker

1999 U.S Report].

As per claim 4, Paizis teaches the computer-implemented method as described in claim 3 further comprising:

(a)   displaying a plurality of groupings **(rankings)** [Column 6, line 23];

(b)   receiving a risk quadrant selection and a grouping selection from the user **(selecting an employee to be analyzed to determine a need to modify their pay value data)** [Column 3, lines 1-2];

(c)   summarizing employee profile data assigned to the selected risk quadrant using the selected grouping creating a second summary **(generating a display including a representation of the suggested level of compensation for each individual in the group of individuals** {which can inherently be aggregated within each quadrant to provide a summary}**)** [Claim 1]; and

(d)   displaying the second summary **(generating a display including a representation of the suggested level of compensation for each individual in the group of individuals)** [Claim 1].

As per claim 5, Paizis teaches the computer-implemented method as described in claim 3 further comprising:

(b)   determining whether incentives are desired for one or more of the selected employees in the selected risk quadrant **(modifications to the target market pay for individuals)** [Column 7, lines 12-13, 16-26]; and

(c)   modifying incentive data **(computing suggested target market pay or modified pay levels)** included in employee profile data areas corresponding to the one or more selected employees [Column 7, lines 16-50].

Paizis does not explicitly teach:

(a)   selecting one of {the employees in one of} the risk quadrants [an inherent step that enables a determination to be made regarding a need to modify pay value data].

However, Paizis does teach the step of selecting individual employees in order to make a determination of modifying target market pay values [Column 3, lines 1-2]. Each employee belongs to one of the defined risk quadrants; thus, Paizis effectively teaches the step of selecting a risk quadrant, meeting the limitation of the claim.

As per claim 6, Paizis teaches the computer-implemented method as described in claim 5 further comprising:

(a)   reassigning the risk quadrants **(after the changed target market pay information is obtained, revised rankings are displayed; re-ranking employees)** for one or more selected employees {for each participant in the survey} in response to the modified incentive data [Column 7, lines 24-26, Column 9, line 64 - Column 10, line 3, and Claim 8]; and

(b)   displaying a second summary corresponding to each risk quadrant

(generating a display including a representation of the suggested level of

compensation for each individual in the group of individuals {which can inherently

be aggregated within each quadrant to provide a summary}) [Claim 1].

As per claim 7, Paizis teaches the computer-implemented method as described

in claim 1 further comprising:

(b)   displaying the identified employees to the user **(employee rankings are**

displayed in step 324 such that a user may review the rankings) [Column 6, lines

23-24];

(c)   determining whether to provide incentives to one or more of the identified

employees **(modifications to the target market pay for individuals)** [Column 7, lines

12-13, 16-26,]; and

(d)   revising **(making changes to)** incentive planning data **(computing**

suggested target market pay or modified pay levels) corresponding to one or more

of the identified employees in response to the determination [Column 7, lines 16-50].

Paizis does not explicitly teach:

(a)   identifying one or more of the selected employees with a high contribution

level and a high attrition risk:

However, Paizis teaches the display of employee rankings, which enables the

user to identify users with certain characteristics such as high or level contribution levels

and competency scores [Column 6, lines 23-24, Figures 5A, 5B, and 5C]. Furthermore,

Paizis teaches the use of computer spreadsheets, enabling employees to be sorted

according to contribution level, competency score, or combined score.

Walker teaches the analysis of attrition risk **{determining levels of employee**

commitment and intent to stay, embodied by placement into one of four employee

groups} for one or more of the employees **{survey results of employees pertaining**

to their commitment and loyalty to their employers and why they feel that way}

[Page 1 of the 1999 Walker U.S Report].

Paizis is directed towards considering employee worth in determining employee

compensation (which impacts employee retention). Walker is directed towards an

analogous art of studying employee relationships with their employer and its impact on

loyalty and commitment (leading to employee retention); thus, it would have been

obvious to one of ordinary skill in the art at the time of invention to combine the

teachings of Paizis of Walker to combine employee data regarding contribution level

and attrition risk, because it would enable the company to cluster employees into

groups of similar flight risk and contribution levels, leading to the identification and

"prioritizing" of employees who should be targeted for retention by being approached

with an intent to modify their compensation package to increase the likelihood of

retention, loyalty, and commitment, since certain combinations of flight risk and

contributions are more desirable than others (i.e., high contribution, high flight risk vs.

low contribution, high flight risk, etc.), and because any increase in an employee's

compensation package (to ensure retention) is still less costly than the cost incurred in

training new hires, thereby enhancing the ability to integrate competency measures,

contribution levels, and market distribution data into compensation decisions, which is a

goal of Paizis [Column 2, lines 46-48].

Claims 8-20 recite limitations already addressed by the rejection of claims 1-7

above; therefore, the same rejection applies.

Furthermore, regarding claim 8, Paizis teaches an information handling system

comprising:

(a)   one or more processors **(CPUs 632)** [Column 11, lines 10-12];

(b)   a memory **(memory devices which include a first primary storage**

device 634 that is typically RAM, and a second primary storage device 636 that is

typically ROM) accessible by the processors [Column 11, lines 12-35]; and

(c)   one or more nonvolatile storage devices **(mass memory device 638)**

accessible by the processors [Column 11, lines 25-35].

Conclusion

5.　　**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Peter Choi whose telephone number is (571) 272 6971.

The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PC

October 10, 2006

C Michelle Tarae
Patent Examiner
Art Unit 3623